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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 JOSE ANTONIO SUCILLA,) No. CV 08-8558 CW
13 Plaintiff,)
14 v.) ORDER OF DISMISSAL
15)
16 MICHAEL J. ASTRUE,)
Commissioner of the Social)
17 Security Administration,)
Defendant.)
18 _____)
19

20 For reasons stated below, this action is dismissed without
21 prejudice for failure to prosecute and to comply with court orders.

22 **BACKGROUND**

23 On January 6, 2009, Plaintiff Jose Antonio Sucilla filed the
24 instant action, with the assistance of counsel, seeking review of
25 Defendant's denial of disability benefits. On March 13, 2009, the
26 parties consented, under 28 U.S.C. § 636(c), to the jurisdiction of
27 the undersigned magistrate judge. On July 13, 2009, Defendant filed
28 an answer to the complaint and Plaintiff's administrative record.

1 On August 11, 2009, Plaintiff's counsel, Laura Krank, filed a
2 motion to withdraw as attorney of record because, among other things,
3 she had formed a view of the case contrary to Plaintiff's and believed
4 that further pursuit of the action would subject her to sanctions.
5 Ms. Krank further stated that Plaintiff did not consent to her
6 withdrawal, retain alternate counsel, or authorize voluntary dismissal
7 of the action.

8 On September 1, 2009, the court issued an order directing
9 Plaintiff to file an opposition or notice of non-opposition to Ms.
10 Krank's motion on or before October 1, 2009; the court stayed all
11 future filing deadlines in the case pending resolution of the motion.
12 Plaintiff did not respond to the order or otherwise communicate with
13 the court.

14 On October 16, 2009, the court issued a second order granting Ms.
15 Krank's motion to withdraw and substituting Plaintiff as attorney of
16 record. The court directed Plaintiff to file a statement of his
17 intent to proceed with the action, either through new retained counsel
18 or pro se, on or before October 26, 2009. Plaintiff was advised that
19 "failure to comply with this order will result in dismissal of this
20 action without prejudice for failure to prosecute." Plaintiff did not
21 respond to the order or otherwise communicate with the court.

22 DISCUSSION

23 It is well established that district courts have authority to
24 dismiss actions for failure to prosecute or to comply with court
25 orders. See Fed. R. Civ. P. 41(b); Link v. Wabash Railroad Co., 370
26 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962)(dismissal for
27 failure to prosecute to avoid undue delay or congestion in court
28 calendars); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992)

1 (dismissal for failure to comply with any court order).

2 In deciding whether to dismiss for failure to prosecute or to
3 comply with court orders a court should consider five factors: (1) the
4 public interest in expeditious resolution of litigation; (2) the
5 court's need to manage its docket; (3) the risk of prejudice to
6 defendants; (4) the public policy favoring disposition of cases on the
7 merits; and (5) the availability of less drastic sanctions. See In re
8 Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994)(failure to prosecute);
9 Ferdik, 963 F.2d at 1260-61 (9th Cir. 1992)(failure to comply with
10 court orders).

11 In the present action, the first two factors -- public interest
12 in expeditious resolution of litigation and the court's need to manage
13 its docket -- weigh in favor of dismissal. Plaintiff has not
14 prosecuted this action by responding to the court's orders despite
15 being warned of the consequences of such failure. This hinders the
16 court's ability to move this case toward disposition and suggests that
17 Plaintiff does not intend to litigate this action diligently.

18 The third factor -- prejudice to defendants -- also weighs in
19 favor of dismissal. A rebuttable presumption of prejudice to a
20 defendant arises when a plaintiff unreasonably delays prosecution of
21 an action. Eisen, 31 F.3d at 1452-53. Nothing suggests that such a
22 presumption is unwarranted in this case.

23 The fourth factor -- public policy in favor of deciding cases on
24 the merits -- ordinarily weighs against dismissal. However, it is a
25 plaintiff's responsibility to move towards disposition at a reasonable
26 pace and avoid dilatory and evasive tactics. See Morris v. Morgan
27 Stanley, 942 F.2d 648, 652 (9th Cir. 1991). Plaintiff has not
28 discharged this responsibility, despite having been instructed on his

1 responsibilities, granted sufficient time in which to discharge them,
2 and warned of the consequences of failure to do so. In these
3 circumstances, the policy favoring resolution of disputes on the
4 merits does not outweigh Plaintiff's failure to obey court orders or
5 to file responsive documents within the time granted.

6 The fifth factor -- availability of less drastic sanctions --
7 also weighs in favor of dismissal. The court cannot move the case
8 toward disposition without Plaintiff's compliance with court orders or
9 participation in this litigation. Plaintiff has shown that he is
10 either unwilling or unable to comply with court orders by filing
11 responsive documents or otherwise cooperating in prosecuting this
12 action. Other possible sanctions for Plaintiff's failures do not
13 reasonably appear likely to assure future compliance.

14 Under these circumstances, dismissal for failure to prosecute is
15 proper. Such a dismissal should not be entered unless a plaintiff has
16 been notified that dismissal is imminent. See West Coast Theater
17 Corp. v. City of Portland, 897 F.2d 1519, 1523 (9th Cir. 1990). Here,
18 Plaintiff was clearly warned in the court's October 16, 2009, order
19 that dismissal would result from his failure to comply with the
20 court's directions, but failed to fulfill his obligations or respond
21 in any way to the court. Under these circumstances, dismissal is
22 warranted.

ORDERS

Accordingly, it is ordered that this action is dismissed without prejudice for failure to prosecute and failure to comply with court orders. The Clerk of the Court shall serve this Order and the Judgment herein on all parties or their counsel.

DATED: January 11, 2010



CARLA M. WOHRLE
United States Magistrate Judge